No. SDRCC 23-0628

IN THE MATTER OF WRESTLING CANADA LUTTE'S DISCIPLINE POLICY

BETWEEN:

DAVID SPINNEY

(Claimant)

-and-

WRESTLING CANADA LUTTE

(Respondent)

-and-

LÚCÁS Ó'CEALLACHÁIN and ED ZINGER

(Affected Parties)

BEFORE:

Peter Lawless, KC (Arbitrator)

APPEARANCES:

On behalf of the Claimant:	Michael Smith (Counsel)
On behalf of the Respondent:	Morgan McKenna (Counsel)
On behalf of the Affected Parties:	Andre Marin (Counsel)

DECISION ON PROCEDURE FOR THE APPEAL

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1. This matter comes before me as an appeal of an arbitrator's decision denying an appeal from a discipline panel's decision wherein the Claimant was found to have violated the Respondent's Discipline Policy and ordered a sanction against the Claimant.

2. The Respondent took no position on the question before me.

3. The narrow question before me is what form this appeal should take. The parties have themselves framed the question differently, but I will frame it as follows:

a. In conducting this appeal is it more appropriate that this procedure be a trial de novo (where I effectively sit in the place of the discipline panel below) or that it be akin to judicial review (where I review the procedure and findings of the arbitrator on appeal below).

4. For the reasons that follow, I find it is more appropriate that, as this matter is an appeal from the decision of an appeal arbitrator below, this procedure be conducted in a form akin to judicial review.

5. In coming to this conclusion, it is first necessary to look to the Canadian Sport Dispute Resolution Code ("Code") which states at Section 6.11:

> *a. The Panel, once appointed, shall have full power to review the facts and apply the law. In particular, the Panel may substitute its decision for the decision that gave rise to the dispute or may substitute such measures and grant such remedies or relief that the Panel deems just and equitable in the circumstances.*
> *b. The Panel shall have the full power to conduct a hearing de novo. The hearing must be de novo where:*
>
> > *i. the SO did not conduct its internal appeal process or denied the Claimant a right of appeal without having heard the case on its merits; or*
> >
> > *ii. if the case is deemed urgent, the Panel determines that errors occurred such that the internal appeal policy was not followed or there was a breach of natural justice.*
>
> *c. No deference need be given by the Panel to any discretion exercised by the Person whose decision is being appealed, unless the Party seeking such deference can demonstrate that Person's relevant expertise.*

6. A plain reading of this section shows there are two circumstances when a hearing de novo is mandatory. In all other circumstances, it is permissive. As the matter before me is not one of the two mandatory circumstances, it is therefore discretionary.

7. In determining how to exercise that discretion, I am mindful of two specific points.

8. First, I note that fact that I am sitting in appeal of the <u>appeal</u> decision below. The decision that is being challenged before me is the decision of the arbitrator that sat in review of the first instance decision.

9. Second, I am guided by the decision of Arbitrator Decary in *Mehmedovic and Tritton v. Judo Canada,* SDRCC 12-0191/92 where he noted:
    a. *It is now common ground that arbitration proceedings under the SDRCC Code are akin to judicial review, as opposed to appeal or trial de novo.*

10. In looking at this, I am further mindful that the SDRCC appeal process is not designed to provide appellants multiple attempts to re-do a hearing looking for a different decision. Each hearing faces discrete and specific questions.

11. The original discipline panel is charged with determining on the facts before it if there was a violation of the relevant policy(ies).

12. The initial appeal panel sits in review of that first instance decision and seeks to determine if there are any errors made by the discipline panel at first instance.

13. In an appeal to the SDRCC from an initial appeal decision, the question is (other than in the two enumerated exceptions set out in section 6.11 of the Code) whether the initial appeal panel made any errors or not. This is most appropriately done by a proceeding akin to judicial review.

14. To have this procedure run as a trial de novo would entirely remove the purpose of the first appeal procedure. It would increase the parties' costs and delay a final finding for no purpose whatsoever. It cannot be the intention of the Code to allow this and indeed the Code itself speaks to its purpose at Section 5.7 where at subsection (f) it sets out:

> *5.7 Procedures of the Panel*
>
> *(f) The Panel shall conduct the proceedings* ***to avoid delay and to achieve a just, speedy and cost-effective resolution of the dispute****, and may impose limitations on the duration of the hearing or the length of submissions.* [emphasis mine]

15. Accordingly, I direct that the procedure before me be akin to a judicial review of the appeal decision below.

16. At the preliminary meeting on July 18, 2023, a schedule was set for the parties to file their respective submissions. At that time, it was unclear what form this proceeding would take. In light of the above decision, I confirm the submission schedule as follows:
    a. August 21, 2023 at 4:00 p.m. (EDT): Claimant's Appeal Submissions
    b. August 28, 2023 at 4:00 p.m. (EDT): Affected Parties and Respondent's Response Submissions.

Signed at Victoria, BC this 12th day of August 2023.

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Peter Lawless, KC
Arbitrator